

FILED
3/27/2015 1:09:43 PM
Donna Kay McKinney
Bexar County District Clerk
Accepted By: Maria Jackson

CAUSE NO. **2015CI05178**

**XENEX DISINFECTION SERVICES
LLC,**

Plaintiff

v.

THE CLOROX COMPANY,

Defendant.

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IN THE DISTRICT COURT

150 JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

Plaintiff XENEX DISINFECTION SERVICES LLC, for cause of action against Defendant THE CLOROX COMPANY alleges as follows:

I.

DISCOVERY CONTROL PLAN

1. Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiff intends to conduct discovery in this case under Level 2.

II.

PARTIES

2. Plaintiff XENEX DISINFECTION SERVICES LLC ("Xenex") is a Texas limited liability company.

3. Defendant THE CLOROX COMPANY ("Clorox" or "Defendant") is a Delaware corporation with its corporate offices and headquarters located at 1221 Broadway, Oakland, California 94612, that may be served via its registered agent for service of process, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801 and phone number (302) 658-7581.

EXHIBIT A

{W0652092.3}

**III.
JURISDICTION AND VENUE**

4. This Court has personal jurisdiction over Defendant, and the amount in controversy in this matter exceeds the minimum jurisdictional limits of this Court. Defendant is authorized to conduct business in Texas and markets its products for sale in Texas

5. Venue is proper in Bexar County pursuant to §15.002(1) and/or 15.002(4) of the Texas Civil Practice and Remedies Code because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Bexar County and/or Plaintiff's principal office was located in Bexar County at the time its cause of action accrued, and Defendant does not reside in Texas or maintain a principal office in Texas.

**IV.
FACTS IN SUPPORT OF ALL CLAIMS**

6. Xenex is engaged in interstate commerce in the production and sale of proprietary ultraviolet hospital disinfection equipment. Defendant is a competitor engaged in interstate commerce in the manufacture and/or sale of hospital disinfection products. Defendant sells a UV device that competes with the Xenex device. Defendant's device uses bulbs that contain up to 20 mg of mercury per lamp as published on Defendant's website.

7. Xenex's website contains accurate statements of fact and/or opinion to the effect that (i) the EPA defines mercury as a toxic pollutant; (ii) the Xenex bulb contains no toxic mercury, but rather contains environmentally friendly xenon gas and does not require special handling or disposal; (iii) all UV competitors use bulbs that contain mercury which requires special handling incident to bulb breakage; (iv) depending upon the amount of mercury present in a mercury bulb, special disposal requirements may apply under federal and state regulations; and (v) the Xenex device is faster than mercury devices. Defendant contends that Xenex is making false or misleading descriptions of fact and/or false or misleading representations of fact

in connection with the commercial advertising or promotion of its product and/or that Xenex's marketing statements violate the Lanham Act pursuant to USCA § 1125, and/or violate other law. Xenex contends that the marketing statements at issue are accurate statements of fact or statements of opinion protected by the First Amendment to the United States Constitution.

**V.
CLAIM FOR DECLARATORY RELIEF**

8. Xenex realleges and incorporates herein by reference the allegations in paragraphs 1-7 above.

9. The dispute between Xenex and Defendant is damaging Xenex by causing uncertainty with respect to its rights with respect to the marketing and advertising of its product, and/or uncertainty about alleged claims for damages by Defendant relating to Xenex's future marketing and advertising.

10. A declaratory judgment from this Court pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code would terminate the controversy giving rise to this action.

11. Xenex alleges that it is entitled to a judgment from this Court declaring that Xenex's website statements at issue in this suit are truthful and accurate statements of fact or statements of opinion that are not prohibited by the Lanham Act or otherwise prohibited by law, and/or that such statements are protected commercial speech pursuant to the First Amendment to the United States Constitution.

**VI.
ATTORNEYS' FEES**

12. Xenex is entitled to and requests an award of court costs and reasonable and necessary attorneys' fees against Defendant pursuant to TEX. CIV. PRAC. & REM. CODE Chapter 37.

VII.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff asks that Defendant be cited to appear, and that the Court enter a judgment against Defendant and awarding Plaintiff (1) the declaratory relief requested above; (2) costs; (3) reasonable and necessary attorneys' fees; and (4) all other relief the court deems appropriate.

Respectfully submitted,



J. BRUCE SCRAFFORD

State Bar No. 17931100

bscrafford@abaustin.com

AMBRUST & BROWN, PLLC

100 Congress Avenue, Suite 1300

Austin, Texas 78701

(512) 435-2300 – telephone

(512) 435-2360 – facsimile

ATTORNEYS FOR PLAINTIFF

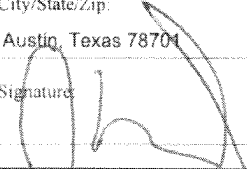
CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED Xenex Disinfection Services LLC v. The Clorox Company

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones, In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:	
Name: <u>J. Bruce Scrafford</u> Email: <u>bscrafford@abaustin.com</u> Address: <u>100 Congress Ave., #1300</u> City/State/Zip: <u>Austin, Texas 78701</u> Signature:  State Bar No.: <u>17931100</u>		Plaintiff(s)/Petitioner(s): <u>Xenex Disinfection Services LLC</u> Defendant(s)/Respondent(s): <u>The Clorox Company</u> [Attach additional page as necessary to list all parties]		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
<i>Civil</i>			<i>Family Law</i>		
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)	
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability <input type="checkbox"/> List Product: <input type="checkbox"/> Other Injury or Damage:	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
Employment	Other Civil				
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:				
Tax	Probate & Mental Health				
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:				
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input checked="" type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					

FILED
4/13/2015 11:46:52 AM
Donna Kay McKinney
Bexar County District Clerk
Accepted By: Brenda Carrillo



Cause Number: 2015CI05178

District Court : 150

Donna Kay McKinney
Bexar County District Clerk

Request for Process

Style: Xenex Disinfection Services LLC Vs. The Clorox Company

Request the following process: (Please check all that Apply)

☒ Citation ☐ Notice ☐ Temporary Restraining Order ☐ Notice of Temporary Protective Order
☐ Temporary Protective Order ☐ Precept with hearing ☐ Precept without a hearing ☐ Writ of Attachment
☐ Writ of Habeas Corpus ☐ Writ of Garnishment ☐ Writ of Sequestration ☐ Capias ☐ Other: _____

1.

Name: The Clorox Company

Registered Agent/By Serving: The Corporation Trust Company

Address 1209 Orange Street (The Corporation Trust Center), Wilmington, New Castle County, Delaware 19801

Service Type: (Check One) ☐ Private Process ☐ Sheriff ☐ Publication (Check One) ☐ Commercial Recorder ☐ Hart Beat ☐ Courthouse Door
☒ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Commissioner of Insurance

2.

Name: _____

Registered Agent/By Serving: _____

Address _____

Service Type: (Check One) ☐ Private Process ☐ Sheriff ☐ Publication (Check One) ☐ Commercial Recorder ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Commissioner of Insurance

3.

Name: _____

Registered Agent/By Serving: _____

Address _____

Service Type: (Check One) ☐ Private Process ☐ Sheriff ☐ Publication (Check One) ☐ Commercial Recorder ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Commissioner of Insurance

4.

Name: _____

Registered Agent/By Serving: _____

Address _____

Service Type: (Check One) ☐ Private Process ☐ Sheriff ☐ Publication (Check One) ☐ Commercial Recorder ☐ Hart Beat ☐ Courthouse Door
☐ Certified Mail ☐ Registered Mail ☐ Out of County ☐ Secretary of State ☐ Commissioner of Insurance

Title of Document/Pleading to be Attached to Process: Plaintiff's Original Petition

Name of Attorney/Pro se: J. Bruce Scrafford

Bar Number: 17931100

Address: 100 Congress Avenue, Suite 1300
Austin, Texas 78701

Phone Number: (512) 435-2300

Attorney for Plaintiff ☒ Defendant _____ Other _____

****IF SERVICE IS NOT PICKED UP WITHIN 14 BUSINESS DAYS, SERVICE WILL BE DESTROYED****

CERTIFIED MAIL #70132250000048116886 Case Number: 2015-CI-05178

XENEX DISINFECTION SERVICES LLC

Plaintiff

vs.

THE CLOROX COMPANY

Defendant

(Note: Attached document may contain additional litigants).

"THE STATE OF TEXAS"

DIRECTED TO: THE CLOROX COMPANY



2015CI05178 S00001

IN THE DISTRICT COURT
150th JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

CITATION

BY SERVING ITS REGISTERED AGENT, THE CORPORATION TRUST COMPANY
1209 ORANGE STREET
WILMINGTON DE 19801-1120

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 27th day of March, 2015.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 14TH DAY OF APRIL A.D., 2015.

PETITION

J BRUCE SCRAFFORD
ATTORNEY FOR PLAINTIFF
100 CONGRESS AVE 1300
AUSTIN, TX 78701-4072



Donna Kay M^cKinney
Bexar County District Clerk

101 W. Nueva, Suite 217
San Antonio, Texas 78205

By: *Monica Hernandez*, Deputy

Officer's Return

Came to hand on the 14th day of April 2015, A.D., at 4:19 o'clock P.M. and EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the ____ day of _____, A.D., 20____, by delivering to _____ a true copy of this Citation, upon which I endorse the date of delivery, together with the accompanying copy of the PETITION

Cause of failure to execute this Citation is _____.

Donna Kay M^cKinney

Clerk of the District Courts of
Bexar County, Texas

By: *Monica Hernandez*, Deputy

FILE COPY (DK003)

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4-14-15 CRT
moo*